



Acquisition Bulletin No. 15-04

Date: May 1, 2015

Deviation No. 2015-00004

MEMORANDUM FOR BUREAU CHIEF PROCUREMENT OFFICERS

FROM:

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SUBJECT: **Class Deviation—Prohibition Against Using Fiscal Year 2015 Funds to contract with an Entity that is Incorporated or Chartered in Bermuda or the Cayman Islands.**

Purpose: This class deviation is issued in accordance with FAR 1.404 to implement provisions from Section 627 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Public Law 113-235) (hereinafter “Act” or “this Act”).

Effective Date: Upon issuance

Expiration Date: Until superseded, incorporated in the FAR or DTAR or otherwise rescinded.

Background: Within Division E of this Act, Section 627 prohibits the use of funds to enter into a contract with an incorporated entity if such entity’s sealed bid or competitive proposal shows that such entity is incorporated or chartered in Bermuda or the Cayman Islands, and such entity’s sealed bid or competitive proposal shows that such entity was previously incorporated in the United States. This provision of this Act only applies to funds appropriated to those Treasury bureaus as well as several other agencies listed in Division E of the Act. The below language is from Section 627 of the Act.

“Sec. 627. None of the funds made available by this Act may be used to enter into any contract with an incorporated entity if such entity’s sealed bid or competitive proposal shows that such entity is incorporated or chartered in Bermuda or the Cayman Islands, and such entity’s sealed bid or competitive proposal shows that such entity was previously incorporated in the United States.”

In accordance, with FAR 1.404(a)(1) a consultation was held with the Chair of the Civilian Agency Acquisition Council (CAAC) on December 22, 2014. This consultation involved the discussion of various provisions of this Act that were identified as potentially having an impact on Treasury procurement. The result of this consultation was the agreement that Treasury needed to move forward with issuing policy to implement Section 627 of this Act. In addition, the CAAC Chair recommended that Treasury coordinate its implementation with the General Services Administration (GSA) who is also a Division E agency. Treasury agreed with the



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CAAC Chair's recommendation and coordinated with GSA in developing an approach for implementing this provision. Overall, the Senior Procurement Executive has determined that the issuance of this deviation to the FAR is authorized and necessary to implement Section 627 of this Act.

Required Bureau Action:

1. Applicability. This AB applies to the use of appropriated funds provided by Division E of this Act that will be used to enter into a contract, including contracts using FAR part 12 procedures for the acquisition of commercial items. No action is required on acquisitions that do not use funds made available by Division E of this Act. The term "contract" as used herein has the same meaning as it is defined in FAR 2.101.

2. New Contracts. Contracting officers shall include the provision at 1052.209-72 (see Attachment A), in each solicitation that will use appropriated funds provided by Division E of this Act to enter into a contract, including solicitations for acquisition of commercial items under FAR part 12. However, for task order or delivery orders, this clause shall only be used if the base contract against which the order is being placed against was awarded in or after FY 2015, and the order uses funds provided by Division E of this Act.

3. Existing contracts. No action is required for existing contracts entered into prior to the effective date of this AB.

4. Action to Take Upon Receipt of an Affirmative Response. When an affirmative response to both elements of paragraph (b) of the provision at 1052.209-72 (see Attachment A), is received, the contracting officer shall refrain from entering into the contract with the entity providing the affirmative response.

5. Bureau Chief Procurement Officers (BCPO) Responsibilities. BCPOs shall

- Disseminate this AB to all contracting personnel;
- Update any related Bureau policies and procedures impacted by this AB; and
- Monitor Bureau compliance with this AB and provide OPE notification of any instances of non-compliance along with the corrective action taken to address the matter of noncompliance.

Additional Information: My point of contact for this APU is Mr. Thomas O'Linn, who may be reached at thomas.olinn@treasury.gov or at OfficeoftheProcurementExecutive@treasury.gov.



**Attachment A –
Acquisition Bulletin No. 15-04
Treasury Class Deviation (Deviation No. 2015-00004)**

**1052.209-72 Representation by Entities regarding Incorporation or Charter in Bermuda or the Cayman Islands – Fiscal Year 2015 Appropriations, Division E Agencies.
(DEVIATION 2015-00004)**

As prescribed by Treasury Acquisition Bulletin No. 15-04 - Class Deviation, insert the following provision in each solicitation that will use funds appropriated by Division E of the Consolidated and Further Continuing Appropriations Act, 2015 to enter into a contract, including solicitations for acquisition of commercial items under FAR part 12.

**1052.209-72 REPRESENTATION BY ENTITIES REGARDING INCORPORATION OR
CHARTER IN BERMUDA OR THE CAYMAN ISLANDS – FISCAL YEAR 2015
APPROPRIATIONS, DIVISION E AGENCIES (DEVIATION 2015-00004) (APR 2015)**

(a) In accordance with Section 627 of the Consolidated and Further Continuing Appropriations, Act, 2015 (Public Law 113-235) none of the funds made available by Division E of Public Law 113-235 may be used to enter into any contract with an incorporated entity if such entity's sealed bid or competitive proposal shows that such entity is incorporated or chartered in Bermuda or the Cayman Islands, and such entity's sealed bid or competitive proposal shows that such entity was previously incorporated in the United States.

(b) The Offeror represents that it is ☐ is not ☐ an entity incorporated or chartered in Bermuda or the Cayman Islands, and was ☐ or was not ☐ previously incorporated in the United States.

(End of provision)

